

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

IN RE:	§	
	§	
PERSEVERANCE GROUP, LLC,	§	Case No. 21-30584-hcm
	§	
DEBTOR,	§	Chapter 11 (Subch V)
_____	§	

**EP SMART MONEY, LLC’S OBJECTION TO DEBTOR’S PLAN OF
REORGANIZATION AND TO CONFIRMATION OF PLAN**

TO THE HONORABLE H. CHRISTOPHER MOTT, UNITED STATES BANKRUPTCY JUDGE:

EP SMART MONEY, LLC (“EPSM”), as a creditor, objects to the Debtor’s Plan of Reorganization (doc. no. 45) and to confirmation of same, as follows:

1. EPSM holds a valid, first-priority deed of trust lien on Debtor’s property at 12536 Sun Terrace Avenue, El Paso, Texas.
2. On November 9, 2021, after a contested hearing, the Court granted relief from the automatic stay to permit EPSM to foreclose on the Sun Terrace Property. (Doc. no. 56.)
3. In the Plan, Debtor proposes to retain and sell the Sun Terrace Property, which is inconsistent with the relief granted by the Court on November 9, 2021. Presumably, the inconsistency is an error resulting from the fact that Debtor filed the Plan on November 1, 2021, *before* the hearing on EPSM’s motion for relief from stay and Debtor did not anticipate that the Court would grant EPSM’s motion for relief.
4. In any event, the Plan should be corrected, amended, or clarified to reflect that EPSM may foreclose on the Sun Terrace Property pursuant to this Court’s November 9, 2021 Order granting relief from stay and that EPSM may amend its claim if a deficiency results.

5. If Debtor intends to use the Plan as a *sub rosa* appeal or motion for reconsideration of the November 9, 2021 Order granting relief from stay to allow EPSM to foreclose, then EPSM objects on the grounds that the Plan is not proposed in good faith and is not fair and equitable.

6. Under the Plan, EPSM is impaired, as admitted by Debtor.

7. EPSM has not accepted the Plan.

8. EPSM has not yet foreclosed but reasonably expects a deficiency balance after foreclosure for a number of reasons including the condition of the property.

9. In the Plan, Debtor makes no provision for unsecured claims. Debtor acknowledges that the Plan is expected to yield approximately \$329,000 for unsecured claims. However, the Plan incorrectly assumes that there are, or that there will be, no unsecured claims.

10. If EPSM suffers a deficiency as expected, the deficiency will surely be unsecured.

11. The Plan unfairly discriminates against unsecured claims in general and against unsecured deficiency claimants, such as EPSM, in particular, in violation of 11 U.S.C. Section 1191(b).

12. The Plan does not provide for EPSM to receive or retain under the Plan on account of its claim property of a value, as of the effective date of the Plan, that is not less than the amount that such holder would so receive or retain if Debtor were liquidated under Chapter 7 on such date, as required by 11 U.S.C. Section 1129(a)(7).

13. EPSM respectfully urges the Court to require Debtor to provide for unsecured claims and, in particular, for the deficiency balance reasonably anticipated by EPSM.

For these reasons, EPSM respectfully objects to Debtor's Plan and urges the Court to deny confirmation and to require Debtor to amend the Plan as required to meet EPSM's objections. EPSM prays for such other and further relief to which it may show itself justly entitled.

Respectfully submitted,

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By: /s/Robert R. Feuille
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Counsel for *EP Smart Money, LLC*

CERTIFICATE OF SERVICE

I do hereby certify that on this the 2nd day of December, 2021, a true and correct copy of the foregoing instrument was filed and served through the CM/ECF system and/or by mail upon the Debtor, the Debtor's counsel, and the persons and entities identified below and in the attached matrix:

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/s/Robert R. Feuille
ROBERT R. FEUILLE

Label Matrix for local noticing
0542-3
Case 21-30584-hcm
Western District of Texas
El Paso
Thu Dec 2 16:39:09 CST 2021

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End of Label Matrix
Mailable recipients 19
Bypassed recipients 0
Total 19